

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC DEVON TURNER et al.,

Defendants and Appellants.

B214725

(Los Angeles County  
Super. Ct. No. YA071281)

ORDER MODIFYING OPINION  
AND DENYING REHEARING  
[NO CHANGE IN JUDGMENT]

THE COURT:\*

It is ordered that the opinion filed herein on July 19, 2010, be modified as follows:

1. On page 5, second sentence of the second full paragraph under Discussion, the word “proscribed” is changed to “prescribed” so the sentence reads:

Greater punishment is prescribed for possession for sale of cocaine base (§ 11351.5 [state imprisonment for three, four, or five years]) than for possession of cocaine for sale (§ 11351 [state imprisonment for two, three, or four years]).

2. On page 6, the third full paragraph commencing with “Even if the issue” is modified to read:

Even if the issue was not forfeited, we find no prejudice from the conflicting references. There was no ambiguity in the criminalist’s identification of the substance as cocaine base. There was no cocaine other than cocaine base recovered in this case, so there was no likelihood of confusion between two types of controlled substances.

Instead, the jury was likely to consider references by the witnesses and by counsel to cocaine, and the designation in the jury instructions and verdict forms to cocaine, as a short form for the only substance at issue in the case—cocaine base. On this record, we conclude appellant was not deprived of his constitutional right to due process and a fair trial by the inaccurate references to cocaine rather than cocaine base. But to avoid even the possibility of confusion, we join the admonition in *Martin* that courts and counsel “be particularly careful that all references to a controlled substance name the correct controlled substance.” (169 Cal.App.4th at p. 827.)

There is no change in the judgment.

Appellant Eric Devon Turner’s petition for rehearing is denied.

---

\*EPSTEIN, P.J., WILLHITE, J.